

Message Text

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ACTION ARA-14

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C O N F I D E N T I A L SANTO DOMINGO 3764

EO 11652 GDS
TAGS/ PINT, DR
SUB: THE PRD OPTS FOR LEGAL MEANS TO REGAIN ITS SENATE MAJORITY

1. THE PRD ON JULY 10 CALLED OFF A PLANNED DAY OF PROTEST SET FOR JULY 11. IT CHOSE INSTEAD TO LAUNCH A LEGAL EFFRT TO OVERTURN THE CAPRICIOUS DECISION BY THE CENTRAL ELECTORAL BOARD (JCE) ON JULY 7 THAT GAVE THE OFFICIAL REFORMISTA PARTY CONTROL OF THE NEXT SENATE CONVENING AUGUST 1G.#THE PARTY IS ALSO CHALLENGING THE JCE'S GIFT OF ONE SEAT IN THE CHAMBER OF DEPUTIES TO THE REFORMISTAS, BUT THAT PHSUE IS NOT CRITICAL; THE PRD WILL HAVE A SUBSTANTIAL MAJORITY IN THE LOWER HOUSE.

2. THE PARTY'S DECISION TO SUSPEND THE "DAY OF WITHDRAWAL", WHICH IT CALLED FOR OVER THE WEEKEND,CAME IN THE WAKE OF A NATIONAL OUTPOURING OF CONCERN BY THE QUALITY PRESS, BUSINESS AND PROFESSIONAL CIRCLES AND THE CHURCH THAT THIS DAY OF "REFLECTION AND PRAYER" SET BY THE PRD WOULD BE EXPLOITED BY THE WORST ELEMENTS IN DOMINICAN LIFE TO SPARK VIOLENCE. THE IMPROVISED ALLIANCE OF THE BESOBELEMENTS IN THE COUNTRY, WHICH HAS SOLIDLY BACKED THE PRD IN ITS EFFORTS TO FIGHT OFF A GOVERNMENT BID TO UPSET THE RESULT OF THE MAY 16 ELECTIONS,
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WAS CALLING ON IE#PARTY, IN EFFECT, TO BEHAVE AS IF IT WERE THE GOVERNMENT.

3. AND IT DIBAM PRESIDENT-ELERT ANTONIO GUZMAN AND OTHER PRD MODERATES ALSO LEARNED THAT EVEN PRAYERFUL PROTEST MIGHT BE VIEWED AS A "GENERAL STRIKE"--A POLITICAL WEAPON WITH PAST CONNOTATIONS

OF VIOLENCE-PREVAILED IN PARTY COUNCILS WITH THE ARGUMENT
THAT THE PRD'S BID TO WIN BACK THE FOUR SENATE SEATS
ARBITRARILY GIVEN TO THE REFOCQISTAS OUGHT TO PROCEED ALONG

STRICTLY LEGAL PATHS. THE SUSPENSION OF THE "WITHDRAWAL"
WAS ANNOUNCED BY PARTY SECGEH PENA GOMEZ, AND THE FIRST
LEGAL STEPS WERE IMMEDIATELY BEGUN BY THE PELTY'S
LEGAL ADVISERS.

4. THESE TOOK THE FORM OF A FORMAL LETTER HANDED TO JCE CHAIRMAN
MANUEL JOAQUIN CASTILLO, REMOVED FROM AUTHORITY EARLY IN THE
REFORMISTA EFXKRT TO CHALLEHE THE ELECTIONS BUT NOW BACK AT
HIS JOB. THE LETTER REQUESTED THE JCE NOT TO ISSUE CERTIFICATES
OF ELECTION TO THE FIVE REFORMISTAS WHOM THE BOARD ON JULY 7
ARBITRARILY NAMED WINNERS. THE PRD DOCUMENT REMINDED
CASTILLO THAT THE ELECTORAL LAW ITSELF STATES THAT IT IS A
CRIME PUNISHABLE BY PRISON AND FINES FOR THE JCE TO ISSUE
CERTIFICATES TO ANYONE NOT "LEGALLY" ELECTED.

5. NO ONE HAS BEEN ABLE TO FATHOM THE LEGAL BASIS OF THE

BOARD'S JULY 7 DECISION :SVNDEED THERE HAS BEEN A VERITABLE
NIAGARA OF OUTRAGED PROTESTS THAT THE DECISION OF THE THREE-MAN
JUNTA, OPERATING UNDER CASTILLO'S SUBSTITUTE, HUGO
VARGAS SUBSWVI, IS UNCONSTITUTIONAL, IILLOGICAL, AND, IN FACT, A
THREAT TO THE FRAIL UNDERPINNINGS OF DOMINICAN DEMOCRACY.
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6. IN ITS 89 -PAGE REPORT, THE JCE DECIDED TO REJECT REFORMISTA
ALLEGATIONS THAT THE VOTER REGISTRATION LISTS HAD BEEN TAMPERED
WITH IN SUCH A WAY AS TO CAUSE A MASSIVE "DISTDCATION" OF
PRO-BALAGUER VOTERS: THE REFORMISTAS, SAID THE JCE, HAD FAILED TO
PROVIDE ANY PROOF OF SUCH "DISLOCATION". THE BOARD DID
ACKNOWLEDGE, HOWEVER, THAT THERE WEGF "INVOLUNTARY ERRORS"
IN THE LISTS WHICH CAUSED A NUMBER OF VOTERS TO LOSE THEIR VOTE.

7. PRESUMABLY ON THIS BASIS-THE JCE NEVER REALLY EXPLAINED ITS
REASONING- THE BOARD OPTED FOR A BIZARRE FORMULA OF GIVING THE
REFORMISTA PARTY WHAT IT HAD NOT SPECIFICALLY ASKED FOR DURING
THE PROTRACTED FORMAL PROCEEDINGS, FOUR SENATE SEATS AND
CONTROL OF THE UPPER HOUSE BY 16-11. THIS WAS DONE BY THE SIMPLE
DEVICE OF TAKING THE TOTAL NUMBERS OF REGISTERED VOTERS IN
EACH OF FOUR PROVINCES WHERE
VOTE WAS CLOSE, SUBTRACTING 10
PERCENT, WHICH IT CALLED A "NORMAL" ABSENTION RATE, AND
ALLOCATING HALF THE REMAINING NUMBER OF ABSTENTIONS AS "VOTES"
FOR THE GOVERNMENT. NOBODY KNOWS WHAT HAPPENED TO THE OTHER HALF;
THEY JUST WEREN'T COUNTED AS ANYBODY'S.

8. THIS WAS THE "SOLOMONIC" DECISION THE PRD HAD WARNED OF BEFOREHAND. THE BOARD SAID IT WAS DECIDING THIS HISTORIC ISSUE IN SUCH A WAY AS TO AVOID "A CONFRONTATION (BETWEEN THE PARTIES) WHICH WOULD BRING THE INTERVENTION GO THE FORCES OF PUBLIC ORDER... WITH UNPREDICTABLE CONSEQUENCES." THE DECISION, THE BOARD SAID, TRYING TO BE REASONABLE, "SHOULD SATISFY BOTH PARTIES."

9. DESPITE THE ARBITRARY NATURE OF THE JCE'S FINDINGS, THE BOARD BY LAW IS THE COURT OF FINAL APPEAL IN ALL ELECTORAL MATTERS AND, THEORETICALLY, IT APPEARS ITS DECISIONS CANNOT BE REVERSED. DESPITE THIS, THE PRD IS TAKING THE JCE'S RULING TO THE SUPREME COURT; IT ARGUES THAT DUE TO THE VIOLATION OF FUNDAMENTAL CONSTITUTIONAL PRECEPTS THE HIGH COURT CAN CONSIDER CONFIDENTIAL

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THE MATTER. THE PARTY IS SUPPORTED BY THE OPINIONS OF SEVERAL PROMINENT JURISTS, INCLUDING THE RESPECTED EX-PRESIDENT, RAFAEL BONNELLY. IT WILL PRESUMABLY BE UP TO THE SUPREME COURT TO DECIDE WHETHER IT HAS SUCH AUTHORITY. AS A MINIMUM, HOWEVER, WHAT THE PRD HAS IN MIND IS CHARGING THE MEMBERS OF THE JCE PERSONALLY WITH VIOLATIONS OF THE LAW IN THE COURSE OF THEIR RULINGS. THE SUPREME COURT IS CONSTITUTIONALLY EMPOWERED TO TRY MEMBERS OF THE JCE FOR CRIMINAL OFFENSES.

10. CALLING OFF THE DAY OF PROTEST AND DECIDING TO PURSUE REDRESS OF THE BOARD'S DECISION THROUGH LEGAL RECOURSE HAS BEEN HAILED AS A GREAT POSITIVE STEP BY RESPONSIBLE SECTORS OF OPINION. IT HAS ALSO REDOUNDED TO THE PRD'S CREDIT AS A PARTY OF MODERATION AND PRAGMATISM WHICH IS BEHAVING ALREADY LIKE A GOVERNING PARTY. MOST PRD LEADERS ARE CONFIDENT THAT GIVEN THE DOMINICAN "PRESIDENTIAL" SYSTEM OF GOVERNMENT, ONCE IN POWER THEY CAN COMPENSATE FOR THE APPARENT LOSS OF THE SENATE. THERE ARE ALREADY SIGNS THAT SOME "REFORMISTA" SENATORS HAVE BEGUN TO MAKE THEIR PRIVATE ACCOMMODATIONS WITH THE NEW ADMINISTRATION.
YOST

NOTE BY OC/T: # AS RECEIVED.

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